

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Friday, July 9, 2010 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 2, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg
Ronda S. DeSplinter
Kimberly B. Kacani, Vice Chair
Milton W. Matthews
Scott Sterling
Miyun Sung
Lucia Anna Trigiani, Chair
Katherine Waddell

Board members Pamela Coerse, Douglas Kleine, and R. Lee Merritt were not in attendance.

DPOR staff present for all or part of the meeting included:

Gordon Dixon, Director
Mark N. Courtney, Deputy Director of LRD
Nick Christner, Deputy Director of CID
Trisha L. Henshaw, Executive Director
Heather Gillespie, Ombudsman
Ann-Marie Brigil, Hearing Officer
Thomas K. Perry, Property Registration Administrator
Betty C. Jones, Administrative Assistant
Earlyne Perkins, Legal Analyst

Steven Jack, counsel to the Board, and R. Thomas Payne, Assistant Attorney General, representing the Commonwealth, both from the Office of the Attorney General were present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the **Call to Order** meeting to order at 10:07 a.m.

Ms. Kacani moved to approve the agenda as amended. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell. **Approval of Agenda**

Mr. Matthews moved that the Board approve the minutes of the June 24, **Approval of Minutes**

2010, meeting. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

**Public Comment
Period**

Regarding File Number 2010-04291, Alexander Properties, Inc., d/b/a Creekside Village Time-Share, the Board met to conduct a formal hearing following the Informal Consultation Proceeding (ICP) to determine whether Alexander Properties, Inc. was in violation of the Time-Share Act. The Board was provided with the agency record to date, which consisted of the Report for the Informal Consultation Proceeding (ICP), transcript and exhibits, and Summary from the ICP. Ms. Henshaw provided a copy of a letter from Mr. Fulk dated July 8, 2010, to the Board offering a settlement proposal. Mr. Fulk's letter stated that Alexander Properties, Inc. had some problems in the past and proposed to not engage in any sales operations until all unrecorded deeds were recorded; and that Alexander Properties, Inc. would offer all owners of unconstructed units a comparable unit and week in a constructed unit.

**Formal Hearing for
File Number 2010-
04291, Alexander
Properties, Inc.,
d/b/a Creekside
Village Time-Share**

At 10:21 a.m., Ms. DeSplinter moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation as permitted by § 2.2-3711.A.7 of the Code of Virginia. The following non-members were in attendance to reasonably aid the consideration of the topic: Steven Jack and Trisha Henshaw.

Closed Meeting

The motion was made with respect to the matter identified as agenda item: V. Formal Hearing, File Number 2010-04291, Alexander Properties, Inc., d/b/a Creekside Village Time-Share. Ms. Waddell seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell.

At 1:48 p.m., Ms. DeSplinter moved that the Board adjourn the closed meeting and immediately reconvene in open session. Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell.

Open Meeting

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Common Interest Community Board has convened a closed meeting on this date pursuant to an affirmative recorded vote in

accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 of the *Code of Virginia* requires a certification by this Common Interest Community Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Common Interest Community Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Common Interest Community Board.

VOTE: 8-0-0

AYES: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell.

NAYS: None.

ABSENT DURING THE VOTE: None.

ABSENT DURING THE MEETING: Coerse, Kleine, and Merritt.

Ms. Waddell made a motion to reject the settlement proposal offered by Mr. Fulk and to approve the Consent Order, which incorporated the Cease and Desist Order as seen and agreed to by Mr. Fulk. In addition, Ms. Waddell further moved that both orders would be made part of the minutes. The motion was seconded by Mr. Ahlberg and unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Sterling, Sung, Trigiani, and Waddell.

Mr. Fulk, on behalf of Alexander Properties, Inc., d/b/a Creekside Village Time-Share, made a statement under oath that he has not, to the best of his knowledge, made any untruthful or intentionally misleading statement to the Board or its agents in any proceeding in connection with this matter and that he appreciates the Board's consideration of this matter.

Chair Trigiani provided the public in attendance with a summary of the information contained in the Consent Order and the Cease and Desist Order for Alexander Properties, Inc., d/b/a Creekside Village Time-

Share.

Chair Trigiani re-opened the public comment period. David and Mary Greene addressed the Board concerning a transaction with Alexander Properties, Inc., d/b/a Creekside Village Time-Share. **Public Comment Period**

John and Stephanie Magee also addressed the Board during the public comment period concerning a transaction with Alexander Properties, Inc., d/b/a Creekside Village Time-Share.

Ms. Trigiani requested that the Board staff monitor Alexander Properties, Inc.'s compliance with the Consent Order and the Cease and Desist Order.

There was no other business.

The Board members were reminded to complete their conflict of interest forms and travel vouchers. **Other Business**
Conflict of Interest and Travel Voucher Forms

There being no further business, the meeting was adjourned at 2:30 p.m. **Adjourn**

Lucia Anna Trigiani, Chair

Gordon N. Dixon, Secretary

**IN THE
COMMONWEALTH OF VIRGINIA
COMMON INTEREST COMMUNITY BOARD**

Re: Alexander Properties, Inc.
Creekside Village
Shenandoah County, VA 22810

File Number 2010-04291
Registration Number 0515960001

CONSENT ORDER

Respondent Alexander Properties, Inc. ("Alexander Properties, Inc.") recognizes and acknowledges being subject to and bound by the Regulations of the Common Interest Community Board ("Board"), as well as by all other applicable Virginia laws.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On July 9, 2010, the Common Interest Community Board (Board) met and reviewed the investigative file in the matter of File Number 2010-04291, Alexander Properties, Inc., d/b/a Creekside Village Time-Share, which includes the Summary of the Informal Consultation Proceeding dated May 6, 2010, transcript from the ICP, and exhibits.

The entire investigative file in this matter, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

The Board and Alexander Properties, Inc., as evidenced by the signatures affixed below, enter into this Consent Order. Alexander Properties, Inc. knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

In addition to this Order, the Board issued a Cease and Desist Order on July 9, 2010, in this matter.

By signing this Consent Order, Alexander Properties, Inc. acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Summary of the Informal Consultation Proceeding. Alexander

Properties, Inc. consents to the following term(s):

Count 1	§ 55-394.1 – 3 violations \$1,000 per violation	\$3,000
Count 2	§ 55-386	\$2,000
Count 3	§ 55-386.A	\$2,000
Count 4	18 VAC 48-40-100	\$2,000
Count 5	55-394.1.C	\$2,000
Count 6	55-376.2	\$2,000
Count 8	18 VAC 48-40-60 – 2 violations \$2,000 per violation	\$4,000
SUB-TOTAL (MONETARY PENALTIES)		\$17,000.00
BOARD COSTS		\$650.00
TOTAL		\$17,650.00

In addition, Alexander Properties, Inc., agrees :

1. To comply with the terms of the Cease and Desist Order, which is incorporated by reference into this Consent Order.
2. The Consent Order shall be docketed as a judgment in Shenandoah County Circuit Court.
3. That Jay M. Fulk, on behalf of Alexander Properties, Inc., make a statement under oath that he has not, to the best of his knowledge, made any untruthful or intentionally misleading statement to the Board or its agents in any proceeding in connection with this matter.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within sixty days of the effective date of this consent order unless otherwise specifically noted above. Alexander Properties, Inc. acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Alexander Properties, Inc. will be responsible for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Alexander Properties, Inc. acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of the registration for Creekside Village until such time as there is compliance with

all terms of this Order. Alexander Properties, Inc. understands the right to have this automatic suspension considered in an Informal Consultation Proceeding pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind Alexander Properties, Inc., to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that Alexander Properties, Inc., shall be bound by its terms and conditions.

Jay F. Fulk *7/9/10*
Signature Date

Jay F. Fulk General Manager
Printed Name and Title

SO ORDERED:

Entered this *9th* day of *July*, 2010.

Common Interest Community Board

BY: *Gordon N. Dixon*
Gordon N. Dixon, Secretary

**IN THE
COMMONWEALTH OF VIRGINIA
COMMON INTEREST COMMUNITY BOARD**

In Re: Alexander Properties, Inc.
 d/b/a Creekside Village Time-Share
 Bayse, Virginia

Registration No.: 96-0001

CEASE AND DESIST ORDER

On July 9, 2010, the Common Interest Community Board (Board) met and reviewed the investigative file in the matter of File Number 2010-04291, Alexander Properties, Inc., d/b/a Creekside Village Time-Share, which includes the Summary of the Informal Consultation Proceeding dated May 6, 2010, transcript from the ICP, and exhibits.

The Board considered applicable law: Chapter 23.3 of Title 54.1 (§§ 54.1-2345 et seq.) and Chapter 21 of Title 55 (§§ 55-360 et seq.) of the Code of Virginia. After reviewing the facts and information contained in the record, the Board hereby orders Alexander Properties, Inc., to cease offering or disposing of any interest in any time-share program, either through initial sale or resale of a time-share, owned or controlled by Alexander Properties, Inc., or any affiliate thereof, until Alexander Properties, Inc. takes the following affirmative action:

Count 1

Section § 55-394.1 of the Code of Virginia requires the developer to file an annual report with the Board. Alexander Properties, Inc. last filed an annual report with the Board in 2006; however the report was incomplete. **The Board hereby orders Alexander Properties, Inc., to provide a current annual report as required by § 55-394.1 of the Code of Virginia acceptable to the Board.**

Count 2

Section 55-386 of the Code of Virginia requires the developer to file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the timeshare project described in the time-share instrument and the public offering statement. Alexander Properties, Inc. does not have a payment and performance bond on file with the Board. **The Board hereby orders Alexander Properties, Inc., to file**

with the Board a payment and performance bond for the estimated cost of completion of all promised and incomplete units and common elements comprising the time-share project pursuant to § 55-386.B of the Code of Virginia or amends the public offering statement and time-share instrument to accurately reflect the current composition of Creekside Village.

Count 3

Section 55-386.A requires the developer to complete all promised and incomplete units and common elements being offered and described in the time-share instrument and public offering statement. Based upon information contained in the investigative file, Alexander Properties, Inc., entered into contracts for the sale of unconstructed units in Phase III of Creekside Village. **The Board hereby orders Alexander Properties, Inc., to complete all promised and incomplete units and common elements being offered and described in the time-share instrument and public offering statement or amend the public offering statement and time-share instrument to accurately reflect the current composition of Creekside Village. In addition, all purchasers who purchased an incomplete unit shall be offered the option of ownership in an existing unit with Alexander Properties, Inc. to pay all fees associated with the time-share unit for the first year after transfer of the alternative time-share unit. This provision does not waive any rights or remedies available to the purchasers against Alexander Properties, Inc.**

Count 4

Section 18 VAC 48-40-100 of the Time-Share Regulations requires amendment to the public offering statement within 20 business days of the occurrence of a material change as defined by § 55-362 of the Code of Virginia. Alexander Properties, Inc. last revised its public offering statement for Creekside Village in 2006. **The Board hereby orders Alexander Properties, Inc. to amend the public offering statement to ensure compliance with the requirements of § 55-374 of the Code of Virginia and to reflect accurate and adequate disclosures to prospective purchasers.**

Count 5

Section 55-394.1.C of the Code of Virginia requires the developer to amend or supplement its registration with the Board to report any material change in the information required by §§ 55-374 and 55-391.1, which must be filed with the Board within 20 business days after the occurrence of the material change. Alexander Properties, Inc. last revised its public offering statement for Creekside Village in 2006. **The Board hereby orders Alexander Properties, Inc. to amend the public offering statement to ensure compliance with the requirements of § 55-374 of the Code of Virginia and to reflect accurate and adequate disclosures to prospective purchasers. Alexander Properties, Inc., shall submit evidence of such amendments to the Board for approval. In addition, after approval by the Board of the public offering statement, Alexander Properties, Inc., shall deliver the**

updated public offering statement to all purchasers who did not receive a current, accurate public offering statement.

Count 6

Section 55-376.2 requires that, at such time as the time-share estate purchaser has fulfilled all of the obligations under the contract and is entitled to a deed for his time-share estate, the developer shall file or caused to be filed within 180 days. According to the investigative file, Alexander Properties, Inc., acknowledges that all deeds were not filed in accordance with § 55-376.2. **The Board hereby orders Alexander Properties, Inc. to file all unrecorded deeds pursuant to § 55-376.2. In addition, Alexander Properties, Inc. shall amend the public offering statement and all sales contracts as it pertains to the filing of deeds to be compliant with § 55-376.2 and shall submit evidence of such acceptable to the Board.**

Count 7

In September 2004, Alexander Properties, Inc. entered into a Consent Order in the matter of File Number 2004-03171 with the Real Estate Board, predecessor to the Common Interest Community Board. Alexander Properties, Inc. did not comply with the Consent Order. **The Board hereby orders Alexander Properties, Inc. to fully comply with the Consent Order entered by the Real Estate Board in September 2004.**

The affirmative actions required by this Order shall be completed and submitted for review by the Board by December 31, 2010. All information submitted in accordance with this Order is subject to approval by the Board.

**FAILURE TO COMPLY WITH ANY TERMS OF THE CEASE AND
DESIST ORDER SHALL CONSTITUTE A BREACH OF THIS ORDER
PURSUANT TO § 55-396.F OF THE CODE OF VIRGINIA.**

SO ORDERED:

Entered this 9th day of July.

Common Interest Community Board

BY: 
Gordon Dixon, Secretary